

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHN BROSNAN,)
)
Plaintiff(s),) No. C08-5216 BZ
)
)
v.)
)
ALVIN FLORIDA, JR., et al.,) **ORDER SCHEDULING**
)
)
Defendant(s).) **JURY TRIAL AND**
)
)
)

Following the Case Management Conference, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. DATES

Trial Date: Monday, 2/8/2010, 5 days

Pretrial Conference: **Tuesday, 1/19/2010, 4 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 12/16/2009**

Last Day for Expert Discovery: **Friday, 11/6/2009**

Last Day for Rebuttal Expert Disclosure: **Friday, 10/30/2009**

Last Day for Expert Disclosure: **Friday, 10/23/2009**

Close of Non-expert Discovery: **Friday, 10/16/2009**

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1 2. DISCLOSURE AND DISCOVERY

2 The parties are reminded that a failure to voluntarily
3 disclose information pursuant to Federal Rule of Civil
4 Procedure 26(a) or to supplement disclosures or discovery
5 responses pursuant to Rule 26(e) may result in exclusionary
6 sanctions. Thirty days prior to the close of non-expert
7 discovery, lead counsel for each party shall serve and file a
8 certification that all supplementation has been completed.

9 In the event a discovery dispute arises, **lead counsel** for
10 each party shall meet in person or, if counsel are outside the
11 Bay Area, by telephone and make a good faith effort to resolve
12 their dispute. Exchanging letters or telephone messages about
13 the dispute is insufficient. The Court does not read
14 subsequent positioning letters; parties shall instead make a
15 contemporaneous record of their meeting using a tape recorder
16 or a court reporter.

17 In the event they cannot resolve their dispute, the
18 parties must participate in a telephone conference with the
19 Court **before** filing any discovery motions or other papers.
20 The party seeking discovery shall request a conference in a
21 letter filed electronically not exceeding two pages (with no
22 attachments) which briefly explains the nature of the action
23 and the issues in dispute. Other parties shall reply in
24 similar fashion within two days of receiving the letter
25 requesting the conference. The Court will contact the parties
26 to schedule the conference.

27 3. MOTIONS

28 Consult Civil Local Rules 7-1 through 7-5 and this

1 Court's standing orders regarding motion practice. Motions
2 for **summary judgment** shall be accompanied by a statement of
3 the material facts not in dispute supported by citations to
4 admissible evidence. The parties shall file a joint statement
5 of undisputed facts where possible. If the parties are unable
6 to reach complete agreement after meeting and conferring, they
7 shall file a joint statement of the undisputed facts about
8 which they do agree. Any party may then file a separate
9 statement of the additional facts that the party contends are
10 undisputed. A party who without substantial justification
11 contends that a fact is in dispute is subject to sanctions.
12 If plaintiff decides to proceed with this case without an
13 attorney, he may wish to consult a manual the Court has
14 adopted to assist *pro se* litigants in presenting their case.
15 This manual is available in the Clerk's Office and online at
16 <http://www.cand.uscourts.gov>.

17 Plaintiff is advised that "[a] motion for summary
18 judgment under Rule 56 of the Federal Rules of Civil Procedure
19 will, if granted, end your case. Rule 56 tells you what you
20 must do in order to oppose a motion for summary judgment.
21 Generally, summary judgment must be granted when there is no
22 genuine issue of material fact--that is, if there is no real
23 dispute about any fact that would affect the result of your
24 case, the party who asked for summary judgment is entitled to
25 judgment as a matter of law, which will end your case. When a
26 party you are suing makes a motion for summary judgment that
27 is properly supported by declarations (or other sworn
28 testimony), you cannot simply rely on what your complaint

1 says. Instead, you must set out specific facts in
2 declarations, depositions, answers to interrogatories, or
3 authenticated documents, as provided in Rule 56(e), that
4 contradict the facts shown in the defendant's declarations and
5 documents and show that there is a genuine issue of material
6 fact for trial. If you do not submit your own evidence in
7 opposition, summary judgment, if appropriate, may be entered
8 against you. If summary judgment is granted, your case will
9 be dismissed and there will be no trial." Rand v. Rowland,
10 154 F.3d 952, 963 (9th Cir. 1998).

11 In addition to **lodging** a Chambers copy of all papers, a
12 copy of all briefs shall be e-mailed in WordPerfect or Word
13 format to the following address: bzpo@cand.uscourts.gov.

14 4. MEDIATION

15 By agreement of the parties, this matter is referred to
16 the ADR Department to schedule a mediation to be conducted
17 within ninety days, if possible. The parties shall promptly
18 notify the Court whether the case is resolved at the
19 Mediation.

20 5. SETTLEMENT

21 This case is referred for assignment to a magistrate
22 judge to conduct a settlement conference in October or
23 November of 2009. Counsel will be contacted by that judge's
24 chambers with a date and time for the conference.

25 6. PRETRIAL CONFERENCE

26 Not less than thirty days prior to the date of the
27 pretrial conference, the parties shall meet and take all steps
28 necessary to fulfill the requirements of this Order.

1 Not less than twenty-one days prior to the pretrial
2 conference, the parties shall: (1) serve and file a joint
3 pretrial statement, containing the information listed in
4 **Attachment 1**, and a proposed pretrial order; (2) serve and
5 file trial briefs, Daubert motions, motions *in limine*, and
6 statements designating excerpts from discovery that will be
7 offered at trial (specifying the witness and page and line
8 references); (3) exchange exhibits, agree on and number a
9 joint set of exhibits and number separately those exhibits to
10 which the parties cannot agree; (4) deliver all marked trial
11 exhibits directly to the courtroom clerk, Ms. Voltz; (5)
12 deliver one extra set of all marked exhibits directly to
13 Chambers; and (6) submit all exhibits in three-ring binders.
14 Each exhibit shall be marked with an exhibit label as
15 contained in **Attachment 2**. The exhibits shall also be
16 separated with correctly marked side tabs so that they are
17 easy to find.

18 No party shall be permitted to call any witness or offer
19 any exhibit in its case in chief that is not disclosed at
20 pretrial, without leave of Court and for good cause.

21 Lead trial counsel for each party shall meet and confer
22 in an effort to resolve all disputes regarding anticipated
23 testimony, witnesses and exhibits. All Daubert motions,
24 motions *in limine*, and objections will be heard at the
25 pretrial conference. Not less than eleven days prior to the
26 pretrial conference, the parties shall serve and file any
27 objections to witnesses or exhibits or to the qualifications
28 of an expert witness. Oppositions shall be filed and served

1 not less than eleven days prior to the conference. There
2 shall be no replies.

3 Not less than twenty-one days prior to the pretrial
4 conference the parties shall serve and file requested voir
5 dire questions, jury instructions, and forms of verdict. The
6 following jury instructions from the *Manual of Model Civil*
7 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be
8 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,
9 3.1-3.3. Do not submit a copy of these instructions. Counsel
10 shall submit a joint set of case specific instructions. Any
11 instructions on which the parties cannot agree may be
12 submitted separately. The Ninth Circuit Manual should be used
13 where possible. Each requested instruction shall be typed in
14 full on a separate page with citations to the authority upon
15 which it is based. Proposed jury instructions taken from the
16 Ninth Circuit Manual need only contain a citation to that
17 source. Any modifications made to proposed instructions taken
18 from a manual of model instructions must be clearly indicated.
19 In addition, all proposed jury instructions should conform to
20 the format of the Example Jury Instruction attached to this
21 Order. Not less than eleven days prior to the pretrial
22 conference, the parties shall serve and file any objections to
23 separately proposed jury instructions.

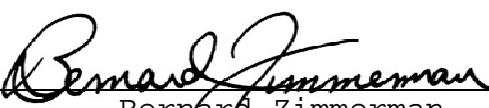
24 Jury instructions that the Court has given in prior cases
25 may be downloaded from the Northern District website at
26 <http://www.cand.uscourts.gov>. (Instructions are located on
27 the "Judge Information" page for Magistrate Judge Zimmerman).
28 The Court will generally give the same instructions in cases

1 involving similar claims unless a party establishes, with
2 supporting authorities, that the instruction is no longer
3 correct or that a different instruction should be given. CACI
4 instructions generally will be given instead of BAJI
5 instructions.

6 A copy of all pretrial submissions, except for exhibits,
7 shall be e-mailed in WordPerfect or Word format to the
8 following address: bzpo@cand.uscourts.gov.

9 At the time of filing the original with the Clerk's
10 Office, two copies of all documents (but only one copy of the
11 exhibits) shall be delivered directly to Chambers (Room 15-
12 6688). Chambers' copies of all pretrial documents shall be
13 three-hole punched at the side, suitable for insertion into
14 standard, three-ring binders.

15 Dated: March 4, 2009


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17 Bernard Zimmerman
United States Magistrate Judge

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ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
 - (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
 - (B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.
 - (C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
 - (D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have

made to resolve disputes over anticipated testimony, exhibits and witnesses.

- (A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.
 - (B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.
 - (C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.
 - (D) Further Discovery or Motions. A statement of all remaining motions, including Daubert motions.

(4) Trial Alternatives and Options.

- (A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.
 - (B) Amendments, Dismissals. A statement of requested or

1 proposed amendments to
2 pleadings or dismissals of
3 parties, claims or defenses.

4 (C) Bifurcation, Separate Trial of
5 Issues. A statement of whether
bifurcation or a separate
trial of specific issues is
feasible and desired.

6 (5) **Miscellaneous.**

7 Any other subjects relevant to the trial of the action,
or material to its just, speedy and inexpensive
8 determination.

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ATTACHMENT 2

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2 **USDC**
3 Case No. CV08-05216 BZ
4 **JOINT** Exhibit No. _____

5 Date Entered _____

6 Signature _____
7 _____

8 **USDC**
9 Case No. CV08-05216 BZ
10 **JOINT** Exhibit No. _____

11 Date Entered _____

12 Signature _____
13 _____

14 **USDC**
15 Case No. CV08-05216 BZ
16 **PLNTF** Exhibit No. _____

17 Date Entered _____

18 Signature _____
19 _____

20 **USDC**
21 Case No. CV08-05216 BZ
22 **PLNTF** Exhibit No. _____

23 Date Entered _____

24 Signature _____
25 _____

26 **USDC**
27 Case No. CV08-05216 BZ
28 **DEFT** Exhibit No. _____

Date Entered _____

Signature _____

1 **USDC**
2 Case No. CV08-05216 BZ
3 **JOINT** Exhibit No. _____

4 Date Entered _____

5 Signature _____
6 _____

7 **USDC**
8 Case No. CV08-05216 BZ
9 **JOINT** Exhibit No. _____

10 Date Entered _____

11 Signature _____
12 _____

13 **USDC**
14 Case No. CV08-05216 BZ
15 **PLNTF** Exhibit No. _____

16 Date Entered _____

17 Signature _____
18 _____

19 **USDC**
20 Case No. CV08-05216 BZ
21 **PLNTF** Exhibit No. _____

22 Date Entered _____

23 Signature _____
24 _____

25 **USDC**
26 Case No. CV08-05216 BZ
27 **DEFT** Exhibit No. _____

28 Date Entered _____

Signature _____

29 **USDC**
30 Case No. CV08-05216 BZ
31 **DEFT** Exhibit No. _____

32 Date Entered _____

33 Signature _____
34 _____